



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

October 22, 2007

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

I am transmitting the attached proposed Council Bill, which amends several provisions of the City's Business License Tax Code to comply with a new state law that becomes effective January 1, 2008. As of that date, the proceeds from sales of tangible personal property must be assigned to the place of delivery, and gross income reportable under the "service and other business activity" classification must be apportioned using a two-factor formula. This two-factor formula consists of a payroll factor and a service income factor as provided by the statute. The result of these changes is an approximate \$21.9 million loss in Seattle's tax revenue in 2008, and \$23 million in 2009.

Additionally, the proposed Bill changes the definition of "telephone business" to include "telecommunications services," making the two terms synonymous, and makes technical corrections to the definitions of "competitive telephone service" and "value proceeding and accruing."

Thank you for your consideration of this legislation. Should you have any questions, please contact Dwight Dively at 684-5200, or Mel McDonald at 233-0071.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", with a long, sweeping flourish extending to the right.

GREG NICKELS
Mayor of Seattle

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ORDINANCE 122503

AN ORDINANCE relating to taxation, amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the definition of telecommunications, and the state mandate regarding the required assignment and apportionment of gross receipts to local jurisdictions; making technical corrections; adding a new section 5.45.081; and amending sections 5.30.025, 5.30.050, 5.30.060, 5.45.075, 5.45.080, 5.45.100, and 5.48.050 of the Seattle Municipal Code.

WHEREAS, in 2003 the Washington State Legislature passed HB 2030, now codified as RCW 35.102, which established mandatory provisions of a Model Ordinance to be used by cities that impose a gross receipts business and occupation tax; and

WHEREAS, beginning on January 1, 2008, RCW 35.102 adds new tax requirements and restrictions to the Model Ordinance that must be adopted by cities within Washington that impose a gross receipts business and occupation tax; and

WHEREAS, the City intends to comply with RCW 35.102 and adopt the amendments to the Model Ordinance; and

WHEREAS, the State of Washington has adopted a new definition of "telecommunications service" that replaces the term "network telephone business" and the City desires to incorporate the new definition into its code; and

WHEREAS, the City desires to add the definition of "delivery," make technical changes to the definitions of "competitive telephone service" and "value proceeding or accruing," and reword the deduction in SMC 5.45.100 J, which allows for a deduction of sales of tangible personal property when such property is delivered by the seller to the buyer at a point outside of Washington; NOW, THEREFORE;

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective January 1, 2008 Section 5.30.025 of the Seattle Municipal Code is amended as follows:

5.30.025 Definitions, C -- D.



E. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Competitive telephone service also includes ~~((directory advertising and))~~leasing of telephone street directories. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

J. "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is



1 authorized in writing by the buyer to receive tangible personal property and take dominion and
2 control by making the final decision to accept or reject the property. Neither a shipping company
3 nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is
4 negotiated or where the buyer obtains title to the property. Delivery terms and other provisions
5 of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of
6 tangible personal property occurs for purposes of Seattle's business license tax.

8 ((J-))K. "Director" means the Director of Executive Administration of the city or any
9 officer, agent or employee of the city designated to act on the Director's behalf.

10 ((K-))L. "Distribution affiliate" means a partnership, limited liability company or other
11 entity that sells merchandise to the customer-owners of the distribution cooperative and which is
12 owned fifty (50) percent or more by the distribution cooperative.

14 ((L-))M. "Distribution cooperative" means a person a) that itself sells, or owns fifty (50)
15 percent or more of a distribution affiliate that sells, merchandise to its customer-owners for resale
16 at retail, b) in which two-thirds of the aggregate outstanding voting ownership interest is owned
17 by its customer-owners, c) that makes distributions to its customer-owners at least partly on the
18 basis of patronage, and d) that qualifies for federal income tax purposes under the provisions of
19 subchapter T of the Internal Revenue Code of 1986, as amended.
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21 **Section 2.** Effective January 1, 2008 Subsections B and C of 5.30.050 of the Seattle
22 Municipal Code are amended as follows:
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24 Definitions, S.

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1 B. "Sale at retail," "retail sale."

2 1. "Sale at retail" or "retail sale" means every sale of tangible personal property
3 (including articles produced, fabricated, or imprinted) to all persons irrespective
4 of the nature of their business and including, among others, without limiting the
5 scope hereof, persons who install, repair, clean, alter, improve, construct, or
6 decorate real or personal property of, or for consumers, other than a sale to a
7 person who presents a resale certificate under RCW 82.04.470 and who:
8

- 9 a. Purchases for the purpose of resale as tangible personal property in the
10 regular course of business without intervening use by such person; or
11 b. Installs, repairs, cleans, alters, imprints, improves, constructs, or
12 decorates real or personal property of, or for consumers, if such tangible
13 personal property becomes an ingredient or component of such real or
14 personal property without intervening use by such person; or
15 c. Purchases for the purpose of consuming the property purchased in
16 producing for sale a new article of tangible personal property or substance,
17 of which such property becomes an ingredient or component or is a
18 chemical used in processing, when the primary purpose of such chemical
19 is to create a chemical reaction directly through contact with an ingredient
20 of a new article being produced for sale; or
21 d. Purchases for the purpose of consuming the property purchased in
22 producing ferrosilicon which is subsequently used in producing
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1 magnesium for sale, if the primary purpose of such property is to create a
2 chemical reaction directly through contact with an ingredient of
3 ferrosilicon; or

4 e. Purchases for the purpose of providing the property to consumers as
5 part of competitive telephone service, as defined in RCW 82.04.065.

6
7 The term shall include every sale of tangible personal property which is used or
8 consumed or to be used or consumed in the performance of any activity classified
9 as a "sale at retail" or "retail sale" even though such property is resold or utilized
10 as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

11
12 2. "Sale at retail" or "retail sale" also means every sale of tangible personal
13 property to persons engaged in any business activity which is taxable under SMC
14 5.45.050 G.

15
16 3. "Sale at retail" or "retail sale" shall include the sale of or charge made for
17 tangible personal property consumed and/or for labor and services rendered in
18 respect to the following:

19 a. The installing, repairing, cleaning, altering, imprinting, or improving of
20 tangible personal property of or for consumers, including charges made for
21 the mere use of facilities in respect thereto, but excluding charges made for
22 the use of coin-operated laundry facilities when such facilities are situated
23 in an apartment house, rooming house, or mobile home park for the
24 exclusive use of the tenants thereof, and also excluding sales of laundry
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1 service to nonprofit health care facilities, and excluding services rendered
2 in respect to live animals, birds and insects;

3 b. The constructing, repairing, decorating, or improving of new or existing
4 buildings or other structures under, upon, or above real property of or for
5 consumers, including the installing or attaching of any article of tangible
6 personal property therein or thereto, whether or not such personal property
7 becomes a part of the realty by virtue of installation, and shall also include
8 the sale of services or charges made for the clearing of land and the
9 moving of earth excepting the mere leveling of land used in commercial
10 farming or agriculture;
11

12 c. The charge for labor and services rendered in respect to constructing,
13 repairing, or improving any structure upon, above, or under any real
14 property owned by an owner who conveys the property by title, possession,
15 or any other means to the person performing such construction, repair, or
16 improvement for the purpose of performing such construction, repair, or
17 improvement and the property is then reconveyed by title, possession, or
18 any other means to the original owner;
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20 d. The sale of or charge made for labor and services rendered in respect to
21 the cleaning, fumigating, razing or moving of existing buildings or
22 structures, but shall not include the charge made for janitorial services; and
23 for purposes of this section the term "janitorial services" shall mean those
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1 cleaning and caretaking services ordinarily performed by commercial
2 janitor service businesses including, but not limited to, wall and window
3 washing, floor cleaning and waxing, and the cleaning in place of rugs,
4 drapes and upholstery. The term "janitorial services" does not include
5 painting, papering, repairing, furnace or septic tank cleaning, snow
6 removal or sandblasting;
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8 e. The sale of or charge made for labor and services rendered in respect to
9 automobile towing and similar automotive transportation services, but not
10 in respect to those required to report and pay taxes under chapter 82.16
11 RCW;
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13 f. The sale of and charge made for the furnishing of lodging and all other
14 services, except ((~~network telephone service~~)) telephone business and cable
15 service, by a hotel, rooming house, tourist court, motel, trailer camp, and
16 the granting of any similar license to use real property, as distinguished
17 from the renting or leasing of real property, and it shall be presumed that
18 the occupancy of real property for a continuous period of one month or
19 more constitutes a rental or lease of real property and not a mere license to
20 use or enjoy the same. For the purposes of this subsection, it shall be
21 presumed that the sale of and charge made for the furnishing of lodging for
22 a continuous period of one month or more to a person is a rental or lease of
23 real property and not a mere license to enjoy the same;
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1 g. The sale of or charge made for tangible personal property, labor and
2 services to persons taxable under (a), (b), (c), (d), (e), and (f) of this
3 subsection when such sales or charges are for property, labor and services
4 which are used or consumed in whole or in part by such persons in the
5 performance of any activity defined as a "sale at retail" or "retail sale" even
6 though such property, labor and services may be resold after such use or
7 consumption.
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9 Nothing contained in this subsection B 3 shall be construed to modify subsection
10 1 of this subsection B, and nothing contained in subsection B 1 shall be construed
11 to modify this subsection B 3.
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13 4. "Sale at retail" or "retail sale" shall also include the providing of competitive
14 telephone service to consumers.

15 5. "Sale at retail" or "retail sale" shall also include the sale of canned software
16 other than a sale to a person who presents a resale certificate under RCW
17 82.04.470, regardless of the method of delivery to the end user, but shall not
18 include custom software or the customization of canned software.
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20 6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for
21 labor and services rendered in respect to the building, repairing, or improving of
22 any street, place, road, highway, easement, right of way, mass public
23 transportation terminal or parking facility, bridge, tunnel, or trestle which is
24 owned by a municipal corporation or political subdivision of the state, the State of
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1 Washington, or by the United States and which is used or to be used primarily for
2 foot or vehicular traffic including mass transportation vehicles of any kind.
3 (Public road construction).

4 7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for
5 labor and services rendered in respect to the constructing, repairing, decorating, or
6 improving of new or existing buildings or other structures under, upon, or above
7 real property of or for the United States, any instrumentality thereof, or a county
8 or city housing authority created pursuant to chapter 35.82 RCW, including the
9 installing, or attaching of any article of tangible personal property therein or
10 thereto, whether or not such personal property becomes a part of the realty by
11 virtue of installation (government contracting).

12 8. "Sale at retail" or "retail sale" shall also include the sale of or charge made for
13 an extended warranty to a consumer. For purposes of this subsection, "extended
14 warranty" means an agreement for a specified duration to perform the replacement
15 or repair of tangible personal property at no additional charge or a reduced charge
16 for tangible personal property, labor, or both, or to provide indemnification for the
17 replacement or repair of tangible personal property, based on the occurrence of
18 specified events. The term "extended warranty" does not include an agreement,
19 otherwise meeting the definition of extended warranty in this subsection, if no
20 separate charge is made for the agreement and the value of the agreement is
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1 included in the sales price of the tangible personal property covered by the
2 agreement.

3 9. "Sale at retail" or "retail sale" shall not include the sale of services or charges
4 made for the clearing of land and the moving of earth of or for the United States,
5 any instrumentality thereof, or a county or city housing authority. Nor shall the
6 term include the sale of services or charges made for cleaning up for the United
7 States, or its instrumentalities, radioactive waste and other byproducts of weapons
8 production and nuclear research and development. (This is reported under the
9 service or other classification).

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11 10. ~~((9-))~~ "Sale at retail" or "retail sale" shall not include the sale of or charge
12 made for labor and services rendered for environmental remedial action ~~((as~~
13 ~~defined in RCW 82.04.2635(2))~~~~((F))~~this is reported under the service or other
14 classification).

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16 C. "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means
17 any sale of tangible personal property which is not a retail sale, and any charge made for labor
18 and services rendered for persons who are not consumers, in respect to real or personal property
19 and retail services, if such charge is expressly defined as a retail sale or retail service when
20 rendered to or for consumers. Sale at wholesale also includes the sale of ~~((network telephone~~
21 ~~service))~~ telephone business to another telecommunications company ~~((as defined in RCW~~
22 ~~80.04.010))~~for the purpose of resale, as contemplated by RCW 35.21.715.
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1 Notwithstanding the above, "sale at wholesale" or "wholesale sale" shall specifically not
2 include a distribution cooperative's or its distribution affiliate's sales of merchandise to a
3 customer-owner of the distribution cooperative for the customer-owner's resale at retail. A
4 distribution cooperative or a distribution affiliate is taxed on such sales pursuant to Section
5 5.45.050 G of the Seattle Municipal Code.
6

7 **Section 3.** Effective January 1, 2008 Subsections C and F of 5.30.060 of the Seattle
8 Municipal Code are amended as follows:

9 **5.30.060 Definitions, T -- Z.**

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12 C. "Telecommunications service" or "Telephone business" means the electronic
13 transmission, conveyance, or routing of voice, data, audio, video, or any other information or
14 signals to a point, or between or among points. It includes such transmission, conveyance, or
15 routing in which computer processing applications are used to act on the form, code, or protocol
16 of the content for purposes of transmission, conveyance, or routing without regard to whether
17 such service is referred to as voice over internet protocol services or is classified by the federal
18 communications commission as enhanced or value added. Telecommunication services or
19 telephone business also includes ancillary services that are associated with or incidental to the
20 provision of telecommunication services including, but not limited to conference bridging,
21 detailed telecommunications billing, directory assistance, vertical service, or voice mail services
22 as defined in RCW 82.04.065.
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by radio or television stations.

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Section 4. Effective January 1, 2008 Section 5.45.075 of the Seattle Municipal Code is amended as follows:

5.45.075 Deductions to prevent multiple taxation of manufacturing activities and, prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a((A)) taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided, may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the city.

2. Notwithstanding the above, a person who is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to



1 the contract price used to measure the tax due to the other city from the measure
2 of the tax owed to the city.

3 B. Person manufacturing products within and without the city. A person manufacturing
4 products within the city using products manufactured by the same person outside the city may
5 deduct from the measure of the manufacturing tax the value of products manufactured outside the
6 city and included in the measure of an eligible gross receipts tax paid to the other jurisdiction
7 with respect to manufacturing such products.
8

9 **Section 5.** Effective January 1, 2008 Section 5.45.080 of the Seattle Municipal Code is
10 amended as follows:

11
12 **5.45.080 Persons conducting business both within and without the city.**

13 This section instructs taxpayers which revenues will be assigned to the city as taxable for
14 periods prior to January 1, 2008. Once the amount subject to tax in Seattle is determined
15 according to this section, then the credit or deductions contained in 5.45.070 and 5.45.075 may
16 be calculated, if applicable.
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19 **Section 6.** Effective January 1, 2008 a new section 5.45.081 is hereby added to the
20 Seattle Municipal Code as follows:

21 **5.45.081 Assignment of revenues.**

22
23 Beginning on January 1, 2008, and with the exception of those persons subject to the
24 provisions of chapter 82.14A RCW, this section will be used to assign revenue for purposes of
25 the business license tax imposed under SMC 5.45.050.
26



1 A. Gross income derived from all activities other than those taxed under SMC 5.45.050
2 F and SMC 5.45.050 G shall be assigned to the location where the activity takes place.

3 B. For sales of tangible personal property, the activity takes place where delivery to the
4 buyer occurs.

5 C. Gross income derived from service and other business activity taxed under SMC
6 5.45.050 G shall be apportioned to the city by multiplying apportionable income by a fraction,
7 the numerator of which is the payroll factor plus the service and other business activity income
8 factor and the denominator of which is two (2).
9

10 1. The payroll factor is a fraction, the numerator of which is the total amount paid
11 for compensation in the city during the tax period by the taxpayer and the
12 denominator of which is the total compensation paid everywhere during the tax
13 period. Compensation is paid in the city if:
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- 15 a. The individual or employee is primarily assigned within the city;
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17 b. The individual is not primarily assigned to any place of business for the
18 tax period and the employee performs fifty percent (50%) or more of his or
19 her service for the tax period in the city; or
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21 c. The individual is not primarily assigned to any place of business for the
22 tax period, the individual does not perform fifty percent (50%) or more of
23 his or her service in any city, and the employee resides in the city.

24 2. The service and other business activity income factor is a fraction, the
25 numerator of which is the total service and other business activity income of the
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1 taxpayer in the city during the tax period, and the denominator of which is the
2 total service and other business activity income of the taxpayer everywhere during
3 the tax period. Service and other business activity income is in the city if:

- 4 a. The customer location is in the city; or
5
6 b. The income-producing activity is performed in more than one (1)
7 location and a greater proportion of the service-income-producing activity
8 is performed in the city than in any other location, based on costs of
9 performance, and the taxpayer is not taxable at the customer location; or
10
11 c. The service and other business activity income producing activity is
12 performed within the city, and the taxpayer is not taxable in the customer
13 location.

14 3. If the allocation and apportionment provisions of this subsection do not fairly
15 represent the extent of the taxpayer's business activity in the city or cities in
16 which the taxpayer does business, the taxpayer may petition for or the tax
17 administrators may jointly require, in respect to all or any part of the taxpayer's
18 business activity, that one of the following methods be used jointly by the cities
19 to allocate or apportion gross income, if reasonable:
20

- 21 a. Separate accounting;
22
23 b. The use of a single factor;
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25 c. The inclusion of one or more additional factors that will fairly represent
26 the taxpayer's business activity in the city; or
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d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

D. The definitions in this subsection apply throughout this section.

1. "Apportionable income" means the gross income of the business taxable under the service and other business activity classification, including income received from activities outside the city if the income would be taxable under the service and other business activity classification if received from activities within the city, less any exemptions or deductions available.

2. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal Internal Revenue Code.

3. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

4. "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

5. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.



1 6. "Service-taxable income" or "service income" means gross income of the
2 business subject to tax under the service and other business activity classification,
3 including but not limited to royalty income.

4 7. "Tax period" means the calendar year during which tax liability is accrued. If
5 taxes are reported by a taxpayer on a basis more frequent than once per year,
6 taxpayers shall calculate the factors for the previous calendar year for reporting in
7 the current calendar year and correct the reporting for the previous year when the
8 factors are calculated for that year, but not later than the end of the first quarter of
9 the following year.
10 the following year.

11 8. "Taxable in the customer location" means either that a taxpayer is subject to a
12 gross receipts tax in the customer location for the privilege of doing business, or
13 that the government where the customer is located has the authority to subject the
14 taxpayer to gross receipts tax regardless of whether, in fact, the government does
15 so.
16 so.

17 E. Assignment or apportionment of revenue under this section shall be made in
18 accordance with and in full compliance with the provisions of the Interstate Commerce Clause of
19 the United States Constitution where applicable.
20 the United States Constitution where applicable.

21 F. This section does not apply to allocate gross income of motor carriers included in the
22 measure of the tax pursuant to subsection 5.45.050 F of the Seattle Municipal Code. However,
23 this section does apply to allocate gross receipts of motor carriers included in the measure of the
24 tax pursuant to any other subsection of SMC 5.45.050.
25 tax pursuant to any other subsection of SMC 5.45.050.



Section 7. Effective January 1, 2008 Section 5.45.100 of the Seattle Municipal Code is amended as follows:

5.45.100 Deductions.

In computing the license fee or tax, the following may be deducted from the measure of tax:

*** * ***

J. Receipts From the Sale of Tangible Personal Property Delivered Outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is ~~((received by the purchaser or its agent))~~delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

W. Receipts From the Sale of Tangible Personal Property or Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property or retail services delivered to the buyer or the buyer's representative outside the city but within the State of Washington may be deducted from the measure of tax under the retailing or wholesaling classifications. Retail services include those services defined as a retail service pursuant to SMC



Section 8. Effective January 1, 2008 Section 5.48.050 of the Seattle Municipal Code is amended as follows:

5.48.050 Occupations subject to tax -- Amount.

There are levied upon, and shall be collected from everyone, including ((T))the City of Seattle, on account of certain business activities engaged in or carried on, annual license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

A. Upon everyone engaged in or carrying on a telecommunications service or telephone business, a fee or tax equal to six (6) percent of the total gross income from such business provided to customers within the city. The tax liability imposed under this section shall not apply for that portion of gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for ~~((network telephone))~~ telecommunication service or telephone business that is purchased for the purpose of resale. (Such charges, except for interstate service, shall be taxed under SMC Chapter 5.45.) The total gross income shall also include all charges by the provider of cellular or cellular mobile telephone services provided to its customers in any taxing jurisdiction (intrastate or interstate), which are billed to a "place of primary use" located in Seattle by or for the home service provider, irrespective of whether the services are provided by the home service provider.

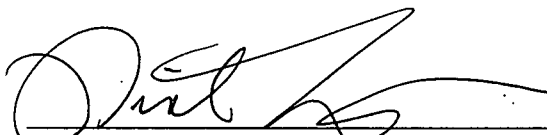


1 I. Upon everyone engaged in the business of operating or conducting a cable television
2 system (CATV), a fee or tax equal to ten (10) percent of the total gross income from gross
3 subscriber revenues. For purposes of this chapter, "gross subscriber revenues" means and
4 includes those revenues derived from the supplying of subscription service, that is, installation
5 fees, disconnect and reconnect fees, fees for regular cable benefits including the transmission of
6 broadcast signals and access and origination channels and per-program or per-channel charges;
7 provided the tax liability imposed under this section shall not include leased channel revenue,
8 advertising revenues, or any other income derived from the system, which shall be taxed under
9 SMC Chapter 5.45. The business of operating or conducting a cable television system (CATV)
10 does not include the provision of interactive two-way communications over cable. Such activities
11 shall be reported under the telecommunication service or telephone business classification.
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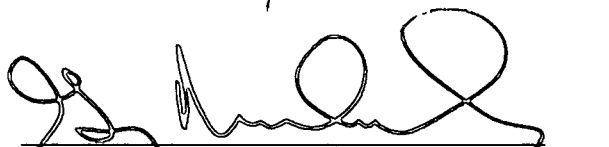


1 **Section 9.** This ordinance shall take effect and be in force thirty (30) days from and after
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

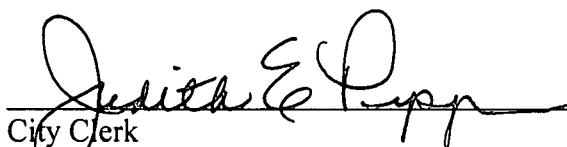
4 Passed by the City Council the 19th day of November, 2007, and signed by me in open
5 session in authentication of its passage this 19th day of November, 2007.

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9 President _____ of the City Council

10 Approved by me this 26th day of November, 2007.

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12 
13 Gregory J. Nickels, Mayor

14
15 Filed by me this 26th day of November, 2007.

16
17 
18 City Clerk

19 (Seal)

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Department of Finance	Dwight Dively/4-5212	Tom Kirn/4-0716

Legislation Title:

AN ORDINANCE relating to taxation, amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the definition of telecommunications, and the state mandate regarding the required assignment and apportionment of gross receipts to local jurisdictions; making technical corrections; adding a new section 5.45.081; and amending sections 5.30.025, 5.30.050, 5.30.060, 5.45.075, 5.45.080, 5.45.100, and 5.48.050 of the Seattle Municipal Code.

- **Summary of the Legislation:**

This legislation amends Title 5 of the Seattle Municipal Code to comply with legislative action taken by the State of Washington in 2003, and makes technical corrections to definitions and deductions. The proposed amendments change the assignment of sales of tangible personal property for tax purposes, and change the apportionment of gross income reportable under SMC 5.45.050 G (service and other revenue) in accordance with RCW 35.102.130, which becomes effective January 1, 2008. The changes will result in a revenue loss of approximately \$21.9 million in 2008, and \$23 million in 2009. The Mayor has proposed a square footage tax to ameliorate most of this revenue shortfall. That tax, which is proposed in separate legislation, will not result in any business paying more than it did under the existing tax law. The ordinance modifies the definition of "telephone business" to reflect the State of Washington's new definition of "telecommunications service" and assigns the new modified definition to both of the terms "telephone business" and "telecommunications service." The ordinance makes technical changes to the terms "competitive telephone service" and "value proceeding or accruing," and also to the deduction provided in SMC 5.45.100 J when taxpayers deliver tangible personal property to the buyer at a point outside the State of Washington. The ordinance also modifies the definition of "retail sale" to remain consist with the State's definition of "retail sale," and with the model ordinance for cities that impose a gross receipts tax.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

In 2003, the Legislature passed HB 2030 (codified as RCW 35.102), which placed new requirements on Washington cities that imposed a tax based on rates against gross receipts. HB 2030 requires gross receipts Business and Occupation (B & O) tax cities,

beginning on January 1, 2008, to assign their sales of tangible personal property to the place of delivery for taxation purposes and to apportion gross income taxable under SMC 5.45.050G (service and other income) under a two-factor formula, which consists of a payroll costs factor and a revenue factor.

Prior to January 1, 2008, the City subjected all sales of tangible personal property originating within Seattle and delivered within Washington to the business license tax (gross receipts tax) unless the sale was delivered into another gross receipts B & O tax city, and subjected to tax by that city. After January 1, 2008, Seattle will lose its ability to tax these sales unless delivery occurs to a location within the city of Seattle itself.

Prior to January 1, 2008 the City was also able to tax "service" income generated by, or rendered by a Seattle business unless it was delivered into and taxed by another gross receipts B & O tax city. The new two-factor formula for service apportionment allows Seattle businesses to assign at least 50% of their income to a location outside of Seattle if the customer is located outside Seattle, regardless of where the service activity takes place. In addition, prior to January 1, 2008, the City was able to tax income for services provided to customers in Seattle by non-Seattle businesses. Under the new service apportionment rules, up to 50% of that income can be assigned to the location of the service provider assuming that the payroll costs are assigned to that location.

The legislation passed by the state in 2003 essentially gave certain businesses a tax break, since many businesses do not create a taxing nexus in the other jurisdictions and thus are not taxable, or the other jurisdiction does not have the authority to tax such transactions under a gross receipts business tax, such as unincorporated areas.

In 2005, the Department of Revenue estimated that the new assignment of sales requirement and the new apportionment formula would result in Seattle losing tax revenue of \$15.6 million in 2004 dollars beginning in 2008. This loss amount has been adjusted by the Finance Department to \$21.9 million due to growth and inflation.

The rewording of the definition "telephone business" and the equating of telephone business to the term "telecommunications service" is to ensure that the definition that was created by the Streamlined Sales and Use Tax Agreement (SSUTA), and adopted by the State of Washington, is included into our definition of telecommunication service and telephone business. The combining of the two definitions is meant to ensure that there is no change in the all-encompassing nature of the telephone business definition for the past when compared to the new telecommunication service definition under SSUTA.

The technical changes to the definitions of "competitive telephone business" and "value proceeding or accruing" are to delete sentences that are no valid as part of the definitions. The technical change in SMC 5.45.100 J that allows for an interstate sales deduction is a

mere rewording of the deduction to match with the definition of delivery that is included in the new section SMC 5.45.081. The technical change that includes extended warranties in the definition of “retail sales” is made to ensure consistency with both State law and the model ordinance for cities that impose a gross receipts tax.

- Please check one of the following:

☐ **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

☒ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
			N/A	N/A
TOTAL			N/A	N/A

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes:

Anticipated Revenue/Reimbursement: Resulting From This Legislation: This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
General Fund 00100	Executive Admin.	B & O taxes	(\$19.7 million)	(\$20.7 mil.)
Park & Recreation Fund 10200		B & O taxes	(\$2.2 million)	(\$2.3 mil.)
TOTAL			(\$21.9 million)	(\$23.0 mil.)

Notes: None.

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: *This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2007 Positions	2007 FTE	2008 Positions**	2008 FTE**
N/A							
TOTAL							

* List each position separately

Notes:

None.

- **Do positions sunset in the future?** (If yes, identify sunset date):

Spending/Cash Flow: *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

Fund Name and Number	Department	Budget Control Level*	2007 Expenditures	2008 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes:

None.

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

The changes proposed by this legislation are mandated by the State Law, so there is no choice but to implement the legislation.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

None.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

No.

Please list attachments to the fiscal note below:

ORDINANCE _____

AN ORDINANCE relating to taxation, amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the definition of telecommunications, and the state mandate regarding the required assignment and apportionment of gross receipts to local jurisdictions; making technical corrections; adding a new section 5.45.081; and amending sections 5.30.025, 5.30.050, 5.30.060, 5.45.075, 5.45.080, 5.45.100, and 5.48.050 of the Seattle Municipal Code.

WHEREAS, in 2003 the Washington State Legislature passed HB 2030, now codified as RCW 35.102, which established mandatory provisions of a Model Ordinance to be used by cities that impose a gross receipts business and occupation tax; and

WHEREAS, beginning on January 1, 2008, RCW 35.102 adds new tax requirements and restrictions to the Model Ordinance that must be adopted by cities within Washington that impose a gross receipts business and occupation tax; and

WHEREAS, the City intends to comply with RCW 35.102 and adopt the amendments to the Model Ordinance; and

WHEREAS, the State of Washington has adopted a new definition of "telecommunications service" that replaces the term "network telephone business" and the City desires to incorporate the new definition into its code; and

WHEREAS, the City desires to add the definition of "delivery," make technical changes to the definitions of "competitive telephone service" and "value proceeding or accruing," and reword the deduction in SMC 5.45.100 J, which allows for a deduction of sales of tangible personal property when such property is delivered by the seller to the buyer at a point outside of Washington; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective January 1, 2008 Section 5.30.025 of the Seattle Municipal Code is amended as follows:

5.30.025 Definitions, C -- D.



E. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Competitive telephone service also includes ~~((directory advertising and))~~ leasing of telephone street directories. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

J. "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is



1 authorized in writing by the buyer to receive tangible personal property and take dominion and
2 control by making the final decision to accept or reject the property. Neither a shipping company
3 nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is
4 negotiated or where the buyer obtains title to the property. Delivery terms and other provisions
5 of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of
6 tangible personal property occurs for purposes of Seattle's business license tax.

8 ((F))K. "Director" means the Director of Executive Administration of the city or any
9 officer, agent or employee of the city designated to act on the Director's behalf.

10 ((K))L. "Distribution affiliate" means a partnership, limited liability company or other
11 entity that sells merchandise to the customer-owners of the distribution cooperative and which is
12 owned fifty (50) percent or more by the distribution cooperative.

14 ((L))M. "Distribution cooperative" means a person a) that itself sells, or owns fifty (50)
15 percent or more of a distribution affiliate that sells, merchandise to its customer-owners for resale
16 at retail, b) in which two-thirds of the aggregate outstanding voting ownership interest is owned
17 by its customer-owners, c) that makes distributions to its customer-owners at least partly on the
18 basis of patronage, and d) that qualifies for federal income tax purposes under the provisions of
19 subchapter T of the Internal Revenue Code of 1986, as amended.

21 **Section 2.** Effective January 1, 2008 Subsections B and C of 5.30.050 of the Seattle
22 Municipal Code are amended as follows:

24 Definitions, S.

25 ***



B. "Sale at retail," "retail sale."

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of, or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of, or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing



1 magnesium for sale, if the primary purpose of such property is to create a
2 chemical reaction directly through contact with an ingredient of
3 ferrosilicon; or

4 e. Purchases for the purpose of providing the property to consumers as
5 part of competitive telephone service, as defined in RCW 82.04.065.

6 The term shall include every sale of tangible personal property which is used or
7 consumed or to be used or consumed in the performance of any activity classified
8 as a "sale at retail" or "retail sale" even though such property is resold or utilized
9 as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

10 2. "Sale at retail" or "retail sale" also means every sale of tangible personal
11 property to persons engaged in any business activity which is taxable under SMC
12 5.45.050 G.

13 3. "Sale at retail" or "retail sale" shall include the sale of or charge made for
14 tangible personal property consumed and/or for labor and services rendered in
15 respect to the following:

16 a. The installing, repairing, cleaning, altering, imprinting, or improving of
17 tangible personal property of or for consumers, including charges made for
18 the mere use of facilities in respect thereto, but excluding charges made for
19 the use of coin-operated laundry facilities when such facilities are situated
20 in an apartment house, rooming house, or mobile home park for the
21 exclusive use of the tenants thereof, and also excluding sales of laundry
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1 service to nonprofit health care facilities, and excluding services rendered
2 in respect to live animals, birds and insects;

3 b. The constructing, repairing, decorating, or improving of new or existing
4 buildings or other structures under, upon, or above real property of or for
5 consumers, including the installing or attaching of any article of tangible
6 personal property therein or thereto, whether or not such personal property
7 becomes a part of the realty by virtue of installation, and shall also include
8 the sale of services or charges made for the clearing of land and the
9 moving of earth excepting the mere leveling of land used in commercial
10 farming or agriculture;
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12 c. The charge for labor and services rendered in respect to constructing,
13 repairing, or improving any structure upon, above, or under any real
14 property owned by an owner who conveys the property by title, possession,
15 or any other means to the person performing such construction, repair, or
16 improvement for the purpose of performing such construction, repair, or
17 improvement and the property is then reconveyed by title, possession, or
18 any other means to the original owner;
19

20 d. The sale of or charge made for labor and services rendered in respect to
21 the cleaning, fumigating, razing or moving of existing buildings or
22 structures, but shall not include the charge made for janitorial services; and
23 for purposes of this section the term "janitorial services" shall mean those
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1 cleaning and caretaking services ordinarily performed by commercial
2 janitor service businesses including, but not limited to, wall and window
3 washing, floor cleaning and waxing, and the cleaning in place of rugs,
4 drapes and upholstery. The term "janitorial services" does not include
5 painting, papering, repairing, furnace or septic tank cleaning, snow
6 removal or sandblasting;
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8 e. The sale of or charge made for labor and services rendered in respect to
9 automobile towing and similar automotive transportation services, but not
10 in respect to those required to report and pay taxes under chapter 82.16
11 RCW;
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13 f. The sale of and charge made for the furnishing of lodging and all other
14 services, except ((~~network telephone service~~)) telephone business and cable
15 service, by a hotel, rooming house, tourist court, motel, trailer camp, and
16 the granting of any similar license to use real property, as distinguished
17 from the renting or leasing of real property, and it shall be presumed that
18 the occupancy of real property for a continuous period of one month or
19 more constitutes a rental or lease of real property and not a mere license to
20 use or enjoy the same. For the purposes of this subsection, it shall be
21 presumed that the sale of and charge made for the furnishing of lodging for
22 a continuous period of one month or more to a person is a rental or lease of
23 real property and not a mere license to enjoy the same;
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1 g. The sale of or charge made for tangible personal property, labor and
2 services to persons taxable under (a), (b), (c), (d), (e), and (f) of this
3 subsection when such sales or charges are for property, labor and services
4 which are used or consumed in whole or in part by such persons in the
5 performance of any activity defined as a "sale at retail" or "retail sale" even
6 though such property, labor and services may be resold after such use or
7 consumption.
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9 Nothing contained in this subsection B 3 shall be construed to modify subsection
10 1 of this subsection B, and nothing contained in subsection B 1 shall be construed
11 to modify this subsection B 3.
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13 4. "Sale at retail" or "retail sale" shall also include the providing of competitive
14 telephone service to consumers.

15 5. "Sale at retail" or "retail sale" shall also include the sale of canned software
16 other than a sale to a person who presents a resale certificate under RCW
17 82.04.470, regardless of the method of delivery to the end user, but shall not
18 include custom software or the customization of canned software.
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20 6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for
21 labor and services rendered in respect to the building, repairing, or improving of
22 any street, place, road, highway, easement, right of way, mass public
23 transportation terminal or parking facility, bridge, tunnel, or trestle which is
24 owned by a municipal corporation or political subdivision of the state, the State of
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1 Washington, or by the United States and which is used or to be used primarily for
2 foot or vehicular traffic including mass transportation vehicles of any kind.

3 (Public road construction).

4 7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for
5 labor and services rendered in respect to the constructing, repairing, decorating, or
6 improving of new or existing buildings or other structures under, upon, or above
7 real property of or for the United States, any instrumentality thereof, or a county
8 or city housing authority created pursuant to chapter 35.82 RCW, including the
9 installing, or attaching of any article of tangible personal property therein or
10 thereto, whether or not such personal property becomes a part of the realty by
11 virtue of installation (government contracting).
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13 8. "Sale at retail" or "retail sale" shall not include the sale of services or charges
14 made for the clearing of land and the moving of earth of or for the United States,
15 any instrumentality thereof, or a county or city housing authority. Nor shall the
16 term include the sale of services or charges made for cleaning up for the United
17 States, or its instrumentalities, radioactive waste and other byproducts of weapons
18 production and nuclear research and development. (This is reported under the
19 service or other classification).
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21 9. "Sale at retail" or "retail sale" shall not include the sale of or charge made for
22 labor and services rendered for environmental remedial action ((as defined in
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~~RCW 82.04.2635(2))(((F))~~this is reported under the service or other classification).

C. "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of ~~((network telephone service))~~ telephone business to another telecommunications company ~~((as defined in RCW 80.04.010))~~ for the purpose of resale, as contemplated by RCW 35.21.715.

Notwithstanding the above, "sale at wholesale" or "wholesale sale" shall specifically not include a distribution cooperative's or its distribution affiliate's sales of merchandise to a customer-owner of the distribution cooperative for the customer-owner's resale at retail. A distribution cooperative or a distribution affiliate is taxed on such sales pursuant to Section 5.45.050 G of the Seattle Municipal Code.

Section 3. Effective January 1, 2008 Subsections C and F of 5.30.060 of the Seattle Municipal Code are amended as follows:

5.30.060 Definitions, T – Z.

C. "Telecommunications service" or "Telephone business" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. It includes such transmission, conveyance, or



1 routing in which computer processing applications are used to act on the form, code, or protocol
2 of the content for purposes of transmission, conveyance, or routing without regard to whether
3 such service is referred to as voice over internet protocol services or is classified by the federal
4 communications commission as enhanced or value added. Telecommunication services or
5 telephone business also includes ancillary services that are associated with or incidental to the
6 provision of telecommunication services including, but not limited to conference bridging,
7 detailed telecommunications billing, directory assistance, vertical service, or voice mail services
8 as defined in RCW 82.04.065.

10 Telecommunication services or telephone business also includes those activities
11 previously used to define telephone business such as the providing by any person of access to a
12 local telephone network, local telephone network switching service, toll service, cellular or
13 mobile telephone service, coin telephone services, pager service or the providing of telephonic,
14 video, data, or similar communication or transmission for hire, via a local telephone network, toll
15 line or channel, cable, microwave, or similar communication or transmission system. The term
16 includes the provision of cooperative or farmer line telephone ((companies)) services or
17 associations operating exchanges. The term also includes the provision of transmission to and
18 from the site of an internet provider via a local telephone network, toll line or channel, cable,
19 microwave, or similar communication or transmission system. "Telecommunication service or
20 t((F))telephone business" does not include the providing of competitive telephone service, data
21 processing, ((or)) providing of cable television service, or other providing of broadcast services
22 by radio or television stations.



F. "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or accrue or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. ~~((The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due.))~~

Section 4. Effective January 1, 2008 Section 5.45.075 of the Seattle Municipal Code is amended as follows:

5.45.075 Deductions to prevent multiple taxation of manufacturing activities and, prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a~~((A))~~ taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services



are provided, may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the city.

2. Notwithstanding the above, a person who is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the city.

B. Person manufacturing products within and without the city. A person manufacturing products within the city using products manufactured by the same person outside the city may deduct from the measure of the manufacturing tax the value of products manufactured outside the city and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Section 5. Effective January 1, 2008 Section 5.45.080 of the Seattle Municipal Code is amended as follows:

5.45.080 Persons conducting business both within and without the city.

This section instructs taxpayers which revenues will be assigned to the city as taxable for periods prior to January 1, 2008. Once the amount subject to tax in Seattle is determined



1 according to this section, then the credit or deductions contained in 5.45.070 and 5.45.075 may
2 be calculated, if applicable.

3 ***

4 **Section 6.** Effective January 1, 2008 a new section 5.45.081 is hereby added to the
5 Seattle Municipal Code as follows:

6 **5.45.081 Assignment of revenues.**

7
8 Beginning on January 1, 2008, and with the exception of those persons subject to the
9 provisions of chapter 82.14A RCW, this section will be used to assign revenue for purposes of
10 the business license tax imposed under SMC 5.45.050.

11 A. Gross income derived from all activities other than those taxed under SMC 5.45.050
12 F and SMC 5.45.050 G shall be assigned to the location where the activity takes place.

13 B. For sales of tangible personal property, the activity takes place where delivery to the
14 buyer occurs.

15 C. Gross income derived from service and other business activity taxed under SMC
16 5.45.050 G shall be apportioned to the city by multiplying apportionable income by a fraction,
17 the numerator of which is the payroll factor plus the service and other business activity income
18 factor and the denominator of which is two (2).

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21 1. The payroll factor is a fraction, the numerator of which is the total amount paid
22 for compensation in the city during the tax period by the taxpayer and the
23 denominator of which is the total compensation paid everywhere during the tax
24 period. Compensation is paid in the city if:
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- a. The individual or employee is primarily assigned within the city;
- b. The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent (50%) or more of his or her service for the tax period in the city; or
- c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent (50%) or more of his or her service in any city, and the employee resides in the city.

2. The service and other business activity income factor is a fraction, the numerator of which is the total service and other business activity income of the taxpayer in the city during the tax period, and the denominator of which is the total service and other business activity income of the taxpayer everywhere during the tax period. Service and other business activity income is in the city if:

- a. The customer location is in the city; or
- b. The income-producing activity is performed in more than one (1) location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or
- c. The service and other business activity income producing activity is performed within the city, and the taxpayer is not taxable in the customer location.



1 3. If the allocation and apportionment provisions of this subsection do not fairly
2 represent the extent of the taxpayer's business activity in the city or cities in
3 which the taxpayer does business, the taxpayer may petition for or the tax
4 administrators may jointly require, in respect to all or any part of the taxpayer's
5 business activity, that one of the following methods be used jointly by the cities
6 to allocate or apportion gross income, if reasonable:
7

- 8 a. Separate accounting;
9 b. The use of a single factor;
10 c. The inclusion of one or more additional factors that will fairly represent
11 the taxpayer's business activity in the city; or
12 d. The employment of any other method to effectuate an equitable
13 allocation and apportionment of the taxpayer's income.
14

15 D. The definitions in this subsection apply throughout this section.

16 1. "Apportionable income" means the gross income of the business taxable under
17 the service and other business activity classification, including income received
18 from activities outside the city if the income would be taxable under the service
19 and other business activity classification if received from activities within the city,
20 less any exemptions or deductions available.
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22 2. "Compensation" means wages, salaries, commissions, and any other form of
23 remuneration paid to individuals for personal services that are or would be
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1 included in the individual's gross income under the federal Internal Revenue
2 Code.

3 3. "Individual" means any individual who, under the usual common law rules
4 applicable in determining the employer-employee relationship, has the status of an
5 employee of that taxpayer.

6 4. "Customer location" means the city or unincorporated area of a county where
7 the majority of the contacts between the taxpayer and the customer take place.

8 5. "Primarily assigned" means the business location of the taxpayer where the
9 individual performs his or her duties.

10 6. "Service-taxable income" or "service income" means gross income of the
11 business subject to tax under the service and other business activity classification,
12 including but not limited to royalty income.

13 7. "Tax period" means the calendar year during which tax liability is accrued. If
14 taxes are reported by a taxpayer on a basis more frequent than once per year,
15 taxpayers shall calculate the factors for the previous calendar year for reporting in
16 the current calendar year and correct the reporting for the previous year when the
17 factors are calculated for that year, but not later than the end of the first quarter of
18 the following year.

19 8. "Taxable in the customer location" means either that a taxpayer is subject to a
20 gross receipts tax in the customer location for the privilege of doing business, or
21 that the government where the customer is located has the authority to subject the
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taxpayer to gross receipts tax regardless of whether, in fact, the government does

so.

E. Assignment or apportionment of revenue under this section shall be made in accordance with and in full compliance with the provisions of the Interstate Commerce Clause of the United States Constitution where applicable.

F. This section does not apply to allocate gross income of motor carriers included in the measure of the tax pursuant to subsection 5.45.050 F of the Seattle Municipal Code. However, this section does apply to allocate gross receipts of motor carriers included in the measure of the tax pursuant to any other subsection of SMC 5.45.050.

Section 7. Effective January 1, 2008 Section 5.45.100 of the Seattle Municipal Code is amended as follows:

5.45.100 Deductions.

In computing the license fee or tax, the following may be deducted from the measure of tax:

J. Receipts From the Sale of Tangible Personal Property Delivered Outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is ~~((received by the purchaser or its agent))~~ delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.



1 W. Receipts From the Sale of Tangible Personal Property or Retail Services Delivered
2 Outside the City but Within Washington. Effective January 1, 2008, amounts included in the
3 gross receipts reported on the tax return derived from the sale of tangible personal property or
4 retail services delivered to the buyer or the buyer's representative outside the city but within the
5 State of Washington may be deducted from the measure of tax under the retailing or wholesaling
6 classifications. Retail services include those services defined as a retail service pursuant to SMC
7 5.30.040 P.

8
9 **Section 8.** Effective January 1, 2008 Section 5.48.050 of the Seattle Municipal Code is
10 amended as follows:

11
12 **5.48.050 Occupations subject to tax – Amount.**

13 There are levied upon, and shall be collected from everyone, including ((F))the City of
14 Seattle, on account of certain business activities engaged in or carried on, annual license fees or
15 occupation taxes in the amount to be determined by the application of rates given against gross
16 income as follows:

17
18 A. Upon everyone engaged in or carrying on a telecommunications service or telephone
19 business, a fee or tax equal to six (6) percent of the total gross income from such business
20 provided to customers within the city. The tax liability imposed under this section shall not
21 apply for that portion of gross income derived from charges to another telecommunications
22 company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access
23 charges relating to intrastate toll telephone services, or for access to, or charges for, interstate
24 services, or charges for ~~((network telephone))~~telecommunication service or telephone business
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1 that is purchased for the purpose of resale. (Such charges, except for interstate service, shall be
2 taxed under SMC Chapter 5.45.) The total gross income shall also include all charges by the
3 provider of cellular or cellular mobile telephone services provided to its customers in any taxing
4 jurisdiction (intrastate or interstate), which are billed to a "place of primary use" located in
5 Seattle by or for the home service provider, irrespective of whether the services are provided by
6 the home service provider.
7

8 ***

9 I. Upon everyone engaged in the business of operating or conducting a cable television
10 system (CATV), a fee or tax equal to ten (10) percent of the total gross income from gross
11 subscriber revenues. For purposes of this chapter, "gross subscriber revenues" means and
12 includes those revenues derived from the supplying of subscription service, that is, installation
13 fees, disconnect and reconnect fees, fees for regular cable benefits including the transmission of
14 broadcast signals and access and origination channels and per-program or per-channel charges;
15 provided the tax liability imposed under this section shall not include leased channel revenue,
16 advertising revenues, or any other income derived from the system, which shall be taxed under
17 SMC Chapter 5.45. The business of operating or conducting a cable television system (CATV)
18 does not include the provision of interactive two-way communications over cable. Such activities
19 shall be reported under the telecommunication service or telephone business classification.
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Section 9. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2007, and signed by me in open session in authentication of its passage this ____ day of _____, 2007.

President _____ of the City Council

Approved by me this _____ day of _____, 2007.

Gregory J. Nickels, Mayor

Filed by me this _____ day of _____, 2007.

City Clerk

(Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Department of Finance	Dwight Dively/4-5212	Tom Kirn/4-0716

Legislation Title:

AN ORDINANCE relating to taxation, amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the definition of telecommunications, and the state mandate regarding the required assignment and apportionment of gross receipts to local jurisdictions; making technical corrections; adding a new section 5.45.081; and amending sections 5.30.025, 5.30.050, 5.30.060, 5.45.075, 5.45.080, 5.45.100, and 5.48.050 of the Seattle Municipal Code.

- **Summary of the Legislation:**

This legislation amends Title 5 of the Seattle Municipal Code to comply with legislative action taken by the State of Washington in 2003, and makes technical corrections to definitions and deductions. The proposed amendments change the assignment of sales of tangible personal property for tax purposes, and change the apportionment of gross income reportable under SMC 5.45.050 G (service and other revenue) in accordance with RCW 35.102.130, which becomes effective January 1, 2008. The changes will result in a revenue loss of approximately \$21.9 million in 2008, and \$23 million in 2009. The Mayor has proposed a square footage tax to ameliorate most of this revenue shortfall. That tax, which is proposed in separate legislation, will not result in any business paying more than it did under the existing tax law. The ordinance modifies the definition of "telephone business" to reflect the State of Washington's new definition of "telecommunications service" and assigns the new modified definition to both of the terms "telephone business" and "telecommunications service." The ordinance also makes technical changes to the terms "competitive telephone service" and "value proceeding or accruing," and also to the deduction provided in SMC 5.45.100 J when taxpayers deliver tangible personal property to the buyer at a point outside the State of Washington.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable).*

In 2003, the Legislature passed HB 2030 (codified as RCW 35.102), which placed new requirements on Washington cities that imposed a tax based on rates against gross receipts. HB 2030 requires gross receipts Business and Occupation (B & O) tax cities, beginning on January 1, 2008, to assign their sales of tangible personal property to the place of delivery for taxation purposes and to apportion gross income taxable under SMC



5.45.050G (service and other income) under a two-factor formula, which consists of a payroll costs factor and a revenue factor.

Prior to January 1, 2008, the City subjected all sales of tangible personal property originating within Seattle and delivered within Washington to the business license tax (gross receipts tax) unless the sale was delivered into another gross receipts B & O tax city, and subjected to tax by that city. After January 1, 2008, Seattle will lose its ability to tax these sales unless delivery occurs to a location within the city of Seattle itself.

Prior to January 1, 2008 the City was also able to tax "service" income generated by, or rendered by a Seattle business unless it was delivered into and taxed by another gross receipts B & O tax city. The new two-factor formula for service apportionment allows Seattle businesses to assign at least 50% of their income to a location outside of Seattle if the customer is located outside Seattle, regardless of where the service activity takes place. In addition, prior to January 1, 2008, the City was able to tax income for services provided to customers in Seattle by non-Seattle businesses. Under the new service apportionment rules, up to 50% of that income can be assigned to the location of the service provider assuming that the payroll costs are assigned to that location.

The legislation passed by the state in 2003 essentially gave certain businesses a tax break, since many businesses do not create a taxing nexus in the other jurisdictions and thus are not taxable, or the other jurisdiction does not have the authority to tax such transactions under a gross receipts business tax, such as unincorporated areas.

In 2005, the Department of Revenue estimated that the new assignment of sales requirement and the new apportionment formula would result in Seattle losing tax revenue of \$15.6 million in 2004 dollars beginning in 2008. This loss amount has been adjusted by the Finance Department to \$21.9 million due to growth and inflation.

The rewording of the definition "telephone business" and the equating of telephone business to the term "telecommunications service" is to ensure that the definition that was created by the Streamlined Sales and Use Tax Agreement (SSUTA), and adopted by the State of Washington, is included into our definition of telecommunication service and telephone business. The combining of the two definitions is meant to ensure that there is no change in the all-encompassing nature of the telephone business definition for the past when compared to the new telecommunication service definition under SSUTA.

The technical changes to the definitions of "competitive telephone business" and "value proceeding or accruing" are to delete sentences that are no valid as part of the definitions. The technical change in SMC 5.45.100 J that allows for an interstate sales deduction is a mere rewording of the deduction to match with the definition of delivery that is included in the new section SMC 5.45.081.



- Please check one of the following:

 This legislation does not have any financial implications. (Stop here and delete the remainder of this document prior to saving and printing.)

 X **This legislation has financial implications.** (Please complete all relevant sections that follow.)

***Appropriations:** This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
			N/A	N/A
TOTAL			N/A	N/A

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes:

***Anticipated Revenue/Reimbursement: Resulting From This Legislation:** This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
General Fund 00100	Executive Admin.	B & O taxes	(\$19.7 million)	(\$20.7 mil.)
Park & Recreation Fund 10200		B & O taxes	(\$2.2 million)	(\$2.3 mil.)
TOTAL			(\$21.9 million)	(\$23.0 mil.)

Notes: None.



Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2007 Positions	2007 FTE	2008 Positions**	2008 FTE**
N/A							
TOTAL							

* List each position separately

Notes:

None.

- **Do positions sunset in the future?** (If yes, identify sunset date):

Spending/Cash Flow: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name and Number	Department	Budget Control Level*	2007 Expenditures	2008 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes:

None.

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

The changes proposed by this legislation are mandated by the State Law, so there is no choice but to implement the legislation.



- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

None.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

No.

Please list attachments to the fiscal note below:

STATE OF WASHINGTON – KING COUNTY

--SS.

217888
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

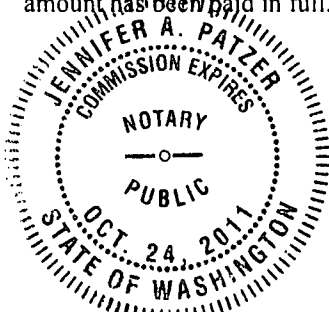
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORDINANCE 122563

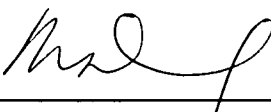
was published on

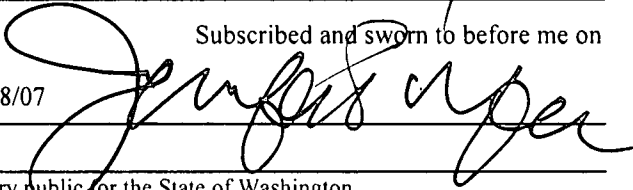
11/28/07

The amount of the fee charged for the foregoing publication is the sum of \$1,039.28, which amount has been paid in full.



Affidavit of Publication



Subscribed and sworn to before me on
11/28/07 

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

ORDINANCE 122563

AN ORDINANCE relating to taxation, amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the definition of telecommunications, and the state mandate regarding the required assignment and apportionment of gross receipts to local jurisdictions; making technical corrections; adding a new section 5.45.081; and amending sections 5.30.025, 5.30.050, 5.30.060, 5.45.075, 5.45.080, 5.45.100, and 5.48.050 of the Seattle Municipal Code.

WHEREAS, in 2003 the Washington State Legislature passed HB 2030, now codified as RCW 35.102, which established mandatory provisions of a Model Ordinance to be used by cities that impose a gross receipts business and occupation tax; and

WHEREAS, beginning on January 1, 2008, RCW 35.102 adds new tax requirements and restrictions to the Model Ordinance that must be adopted by cities within Washington that impose a gross receipts business and occupation tax; and

WHEREAS, the City intends to comply with RCW 35.102 and adopt the amendments to the Model Ordinance; and

WHEREAS, the State of Washington has adopted a new definition of "telecommunications service" that replaces the term "network telephone business" and the City desires to incorporate the new definition into its code; and

WHEREAS, the City desires to add the definition of "delivery," make technical changes to the definitions of "competitive telephone service" and "value proceeding or accruing," and reword the deduction in SMC 5.45.100 J, which allows for a deduction of sales of tangible personal property when such property is delivered by the seller to the buyer at a point outside of Washington; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective January 1, 2008 Section 5.30.025 of the Seattle Municipal Code is amended as follows:

5.30.025 Definitions, C -- D.

E. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Competitive telephone service also includes (directory advertising and) leasing of telephone street directories. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

J. "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of Seattle's business license tax.

((J-))K. "Director" means the Director of Executive Administration of the city or any officer, agent or employee of the city designated to act on the Director's behalf.

((K-))L. "Distribution affiliate" means a partnership, limited liability company or other entity that sells merchandise to the customer-owners of the distribution cooperative and which is owned fifty (50) percent or more by the distribution cooperative.

((L-))M. "Distribution cooperative" means a person a) that itself sells, or owns fifty (50) percent or more of a distribution affiliate that sells, merchandise to its customer-owners for resale at retail, b) in which two-thirds of the aggregate outstanding voting ownership interest is owned by its customer-owners, c) that makes distributions to its customer-owners at least partly on the basis of patronage, and d) that qualifies for federal income tax purposes under the provisions of subchapter T of the Internal Revenue Code of 1986, as amended.

Section 2. Effective January 1, 2008 Subsections B and C of 5.30.050 of the Seattle Municipal Code are amended as follows:

Definitions, S.

B. "Sale at retail," "retail sale."

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of, or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of, or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

d. Purchases for the purpose of consuming the property purchased in producing ferro-silicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferro-silicon; or

e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065.

The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under SMC 5.45.050 G.

3. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

f. The sale of and charge made for the furnishing of lodging and all other services, except (network telephone service) telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

g. The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption.

Nothing contained in this subsection B 3 shall be construed to modify subsection 1 of this subsection B, and nothing contained in subsection B 1 shall be construed to modify this subsection B 3.

4. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

5. "Sale at retail" or "retail sale" shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction).

7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

8. "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

9. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instru-

mentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This is reported under the service or other classification).

10. ((9-)) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action ((as defined in RCW 82.04.2605(2)))(47) this is reported under the service or other classification).

C. "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of ((network telephone service) telephone business to another telecommunications company ((as defined in RCW 80.04.010)) for the purpose of resale, as contemplated by RCW 35.21.715.

Notwithstanding the above, "sale at wholesale" or "wholesale sale" shall specifically not include a distribution cooperative's or its distribution affiliate's sales of merchandise to a customer-owner of the distribution cooperative for the customer-owner's resale at retail. A distribution cooperative or a distribution affiliate is taxed on such sales pursuant to Section 5.45.050 G of the Seattle Municipal Code.

Section 3. Effective January 1, 2008 Subsections C and F of 5.30.060 of the Seattle Municipal Code are amended as follows:

5.30.060 Definitions, T -- Z.

C. "Telecommunications service" or "telephone business" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. It includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunication services or telephone business also includes ancillary services that are associated with or incidental to the provision of telecommunication services including, but not limited to, conference bridging, detailed telecommunications billing, directory assistance, virtual services, or voice mail services as defined in RCW 82.04.065.

Telecommunication services or telephone business also includes those activities previously used to define telephone business such as the providing by any person of access to a local telephone network, local telephone network switching service, toll service, cellular or mobile telephone service, coin telephone services, pager service or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes the provision of cooperative or farmer line telephone ((companies)) services or associations operating exchanges. The term also includes the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication, or transmission system. "Telecommunication service or (T)(P) telephone business" does not include the providing of competitive telephone service, data processing, ((or)) providing of cable television service, or other providing of broadcast services by radio or television stations.

F. "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or accrue or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. ((The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due:))

Section 4. Effective January 1, 2008 Section 5.45.075 of the Seattle Municipal Code is amended as follows:

5.45.075 Deductions to prevent multiple taxation of manufacturing activities and, prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a ((A)) taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided, may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the city.

2. Notwithstanding the above, a person who is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the city.

B. Person manufacturing products within and without the city. A person manufacturing products within the city using products manufactured by the same person outside the city may deduct from the measure of the manufacturing tax the value of products manufactured outside the city and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Section 5. Effective January 1, 2008 Section 5.45.080 of the Seattle Municipal Code is amended as follows:

5.45.080 Persons conducting business both within and without the city.

This section instructs taxpayers which revenues will be assigned to the city as taxable for periods prior to January 1, 2008. Once the amount subject to tax in Seattle is determined according to this section, then the credit or deductions contained in 5.45.070 and 5.45.075 may be calculated, if applicable.

Section 6. Effective January 1, 2008 a new section 5.45.081 is hereby added to the Seattle Municipal Code as follows:

5.45.081 Assignment of revenues.

Beginning on January 1, 2008, and with the exception of those persons subject to the provisions of chapter 82.14A RCW, this section will be used to assign revenue for purposes of the business license tax imposed under SMC 5.45.050.

A. Gross income derived from all activities other than those taxed under SMC 5.45.050 F and SMC 5.45.050 G shall be assigned to the location where the activity takes place.

B. For sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

C. Gross income derived from service and other business activity taxed under SMC 5.45.050 G shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service and other business activity income factor and the denominator of which is two (2).

1. The payroll factor is a fraction, the numerator of which is the total amount paid for compensation in the city during the tax period by the taxpayer and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

a. The individual or employee is primarily assigned within the city;

b. The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent (50%) or more of his or her service for the tax period in the city; or

c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent (50%) or more of his or her service in any city, and the employee resides in the city.

2. The service and other business activity income factor is a fraction, the numerator of which is the total service and other business activity income of the taxpayer in the city during the tax period, and the denominator of which is the total service and other business activity income of the taxpayer everywhere during the tax period. Service and other business activity income is in the city if:

a. The customer location is in the city; or

b. The income-producing activity is performed in more than one (1) location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

c. The service and other business activity income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

3. If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

- Separate accounting;
- The use of a single factor;
- The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
- The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

D. The definitions in this subsection apply throughout this section.

1. "Apportionable income" means the gross income of the business taxable under the service and other business activity classification, including income received from activities outside the city if the income would be taxable under the service and other business activity classification if received from activities within the city, less any exemptions or deductions available.

2. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal Internal Revenue Code.

3. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

4. "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

5. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

6. "Service-taxable income" or "service income" means gross income of the business subject to tax under the service and other business activity classification, including but not limited to royalty income.

7. "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

8. "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

E. Assignment of apportionment of revenue under this section shall be made in accordance with and in full compliance with the provisions of the Interstate Commerce Clause of the United States Constitution where applicable.

F. This section does not apply to allocate gross income of motor carriers included in the measure of the tax pursuant to subsection 5.45.050 F of the Seattle Municipal Code. However, this section does apply to allocate gross receipts of motor carriers included in the measure of the tax pursuant to any other subsection of SMC 5.45.050.

Section 7. Effective January 1, 2008 Section 5.45.100 of the Seattle Municipal Code is amended as follows:

5.45.100 Deductions.

In computing the license fee or tax, the following may be deducted from the measure of tax:

J. Receipts From the Sale of Tangible Personal Property Delivered Outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is ((received by the purchaser or its agent)) delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

W. Receipts From the Sale of Tangible Personal Property or Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property or retail services delivered to the buyer or the buyer's representative outside the city but within the State of Washington may be deducted from the measure of tax under the retailing or wholesaling classifications. Retail services include those services defined as a retail service pursuant to SMC 5.30.040 F.

Section 8. Effective January 1, 2008 Section 5.48.050 of the Seattle Municipal Code is amended as follows:

5.48.050 Occupations subject to tax -- Amount.

There are levied upon, and shall be collected from everyone including ((T)) the City of Seattle, on account of certain business activities engaged in or carried on, annual license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

A. Upon everyone engaged in or carrying on a telecommunication service or telephone business, a fee or tax equal to six (6) percent of the total gross income from such business provided to customers within the city. The tax liability imposed under this section shall not apply for that portion of gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services; or for access to, or charges for, interstate services, or charges for ((network telephone)) telecommunication service or telephone business that is purchased for the purpose of resale. (Such charges, except for interstate service, shall be taxed under SMC Chapter 5.45.) The total gross income shall also include all charges by the provider of cellular or cellular mobile telephone services provided to its customers in any taxing jurisdiction (intrastate or interstate), which are billed to a "place of primary use" located in Seattle by or for the home service provider, irrespective of whether the services are provided by the home service provider.

I. Upon everyone engaged in the business of operating or conducting a cable television system (CATV), a fee or tax equal to ten (10) percent of the total gross income from gross subscriber revenues. For purposes of this chapter, "gross subscriber revenues" means and includes those revenues derived from the supplying of subscription service, that is, installation fees, disconnect and reconnect fees, fees for regular cable benefits including the transmission of broadcast signals and access and origination channels and per-program or per-channel charges; provided the tax liability imposed under this section shall not include leased channel revenue, advertising revenues, or any other income derived from the system, which shall be taxed under SMC Chapter 5.45. The business of operating or conducting a cable television system (CATV) does not include the provision of interactive two-way communications over cable. Such activities shall be reported under the telecommunication service or telephone business classification.

Section 9. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 19th day of November, 2007, and signed by me in open session in authentication of its passage this 19th day of November, 2007.

NICK LICATA,

President of the City Council.

Approved by me this 26th day of November, 2007.

GREGORY J. NICKELS,

Mayor.

Filed by me this 26th day of November, 2007.

(Seal) JUDITH E. PIPPIN,

City Clerk.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, November 28, 2007.

11/28(217888)

STATE OF WASHINGTON – KING COUNTY

--SS.

217888
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

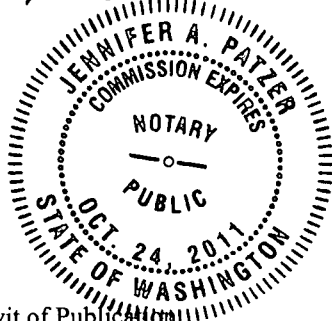
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORDINANCE 122563

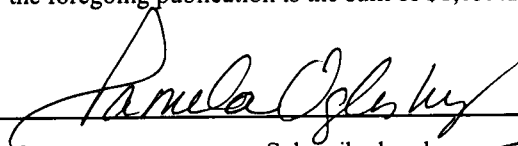
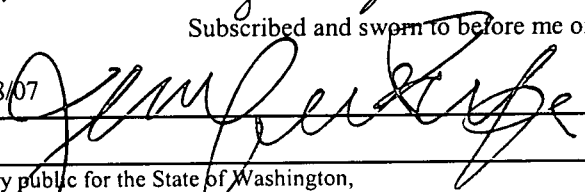
was published on

11/28/07

The amount of the fee charged for the foregoing publication is the sum of \$1,039.28, which amount has been paid in full.



Affidavit of Publication


Subscribed and sworn to before me on
11/28/07 
Notary public for the State of Washington,
residing in Seattle

City of Seattle

ORDINANCE 122563

AN ORDINANCE relating to taxation, amending the Seattle Municipal Code due to changes in the Revised Code of Washington, as it pertains to the definition of telecommunications, and the state mandate regarding the required assignment and apportionment of gross receipts to local jurisdictions; making technical corrections; adding a new section 5.45.081; and amending sections 5.30.025, 5.30.050, 5.30.060, 5.45.075, 5.45.080, 5.45.100, and 5.48.050 of the Seattle Municipal Code.

WHEREAS, in 2003 the Washington State Legislature passed HB 2030, now codified as RCW 35.102, which established mandatory provisions of a Model Ordinance to be used by cities that impose a gross receipts business and occupation tax; and

WHEREAS, beginning on January 1, 2008, RCW 35.102 adds new tax requirements and restrictions to the Model Ordinance that must be adopted by cities within Washington that impose a gross receipts business and occupation tax; and

WHEREAS, the City intends to comply with RCW 35.102 and adopt the amendments to the Model Ordinance; and

WHEREAS, the State of Washington has adopted a new definition of "telecommunications service" that replaces the term "network telephone business" and the City desires to incorporate the new definition into its code; and

WHEREAS, the City desires to add the definition of "delivery," make technical changes to the definitions of "competitive telephone service" and "value proceeding or accruing," and reword the deduction in SMC 5.45.100 J, which allows for a deduction of sales of tangible personal property when such property is delivered by the seller to the buyer at a point outside of Washington; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective January 1, 2008 Section 5.30.025 of the Seattle Municipal Code is amended as follows:

5.30.025 Definitions, C -- D.

E. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made. Competitive telephone service also includes (directory advertising and) leasing of telephone street directories. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

J. "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of Seattle's business license tax.

State of Washington, King County

((K))K. "Director" means the Director of Executive Administration of the city or any officer, agent or employee of the city designated to act on the Director's behalf.

((K))L. "Distribution affiliate" means a partnership, limited liability company or other entity that sells merchandise to the customer-owners of the distribution cooperative and which is owned fifty (50) percent or more by the distribution cooperative.

((K))M. "Distribution cooperative" means a person a) that itself sells, or owns fifty (50) percent or more of a distribution affiliate that sells, merchandise to its customer-owners for resale at retail, b) in which two-thirds of the aggregate outstanding voting ownership interest is owned by its customer-owners, c) that makes distributions to its customer-owners at least partly on the basis of patronage, and d) that qualifies for federal income tax purposes under the provisions of subchapter T of the Internal Revenue Code of 1986, as amended.

Section 2. Effective January 1, 2008 Subsections B and C of 5.30.050 of the Seattle Municipal Code are amended as follows:

Definitions, S.

B. "Sale at retail," "retail sale."

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of, or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of, or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065.

The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under SMC 5.45.050 G.

3. "Sale at retail" or "retail sale" shall include the sale of or charge made for the furnishing of tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then conveyed by title, possession, or any other means to the original owner;

d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

f. The sale of and charge made for the furnishing of lodging and all other services, except ((network telephone service)) telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

g. The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption.

Nothing contained in this subsection B 3 shall be construed to modify subsection 1 of this subsection B, and nothing contained in subsection B 1 shall be construed to modify this subsection B 3.

4. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

5. "Sale at retail" or "retail sale" shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction).

7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

8. "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

9. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth or for the United States, any intru-

mentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This is reported under the service or other classification).

10. ((9)) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action ((as defined in RCW 82.04.2695(2))) ((FF)) this is reported under the service or other classification).

C. "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of ((network telephone service)) telephone business to another telecommunications company ((as defined in RCW 82.04.010)) for the purpose of resale, as contemplated by RCW 35.21.715.

Notwithstanding the above, "sale at wholesale" or "wholesale sale" shall specifically not include a distribution cooperative's or its distribution affiliate's sales of merchandise to a customer-owner of the distribution cooperative for the customer-owner's resale at retail. A distribution cooperative or a distribution affiliate is taxed on such sales pursuant to Section 5.45.050 G of the Seattle Municipal Code.

Section 3. Effective January 1, 2008 Subsections C and F of 5.30.060 of the Seattle Municipal Code are amended as follows:

5.30.060 Definitions, T -- Z.

C. "Telecommunications service" or "Telephone business" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, it includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunication services or telephone business also includes ancillary services that are associated with or incidental to the provision of telecommunication services including, but not limited to, conference bridging, detailed telecommunication billing, directory assistance, vertical service, or voice mail services as defined in RCW 82.04.065.

Telecommunication services or telephone business also includes those activities previously used to define telephone business such as the providing by any person of access to a local telephone network, local telephone network switching service, toll service, cellular, or mobile telephone service, coin telephone services, pager service, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes the provision of cooperative or farmer line telephone ((companies)) services or associations operating exchanges. The term also includes the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Telecommunication service" or ((F)) "telephone business" does not include the providing of competitive telephone service, data processing, ((or)) providing of cable television service, or other providing of broadcast services by radio or television stations.

F. "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or accrue or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. ((The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due.))

Section 4. Effective January 1, 2008 Section 5.45.075 of the Seattle Municipal Code is amended as follows:

5.45.075 Deductions to prevent multiple taxation of manufacturing activities and, prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a ((A)) taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided, may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the city.

2. Notwithstanding the above, a person who is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the city.

B. Person manufacturing products within and without the city. A person manufacturing products within the city using products manufactured by the same person outside the city may deduct from the measure of the manufacturing tax the value of products manufactured outside the city and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Section 5. Effective January 1, 2008 Section 5.45.080 of the Seattle Municipal Code is amended as follows:

5.45.080 Persons conducting business both within and without the city.

This section instructs taxpayers which revenues will be assigned to the city as taxable for periods prior to January 1, 2008. Once the amount subject to tax in Seattle is determined according to this section, then the credit or deductions contained in 5.45.070 and 5.45.075 may be calculated, if applicable.

Section 6. Effective January 1, 2008 a new section 5.45.081 is hereby added to the Seattle Municipal Code as follows:

5.45.081 Assignment of revenues.

Beginning on January 1, 2008, and with the exception of those persons subject to the provisions of chapter 82.14A RCW, this section will be used to assign revenue for purposes of the business license tax imposed under SMC 5.45.050.

A. Gross income derived from all activities other than those taxed under SMC 5.45.050 F and SMC 5.45.050 G shall be assigned to the location where the activity takes place.

B. For sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

C. Gross income derived from service and other business activity taxed under SMC 5.45.050 G shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service and other business activity income factor and the denominator of which is two (2).

1. The payroll factor is a fraction, the numerator of which is the total amount paid for compensation in the city during the tax period by the taxpayer and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

a. The individual or employee is primarily assigned within the city;

b. The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent (50%) or more of his or her service for the tax period in the city; or

c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent (50%) or more of his or her service in any city, and the employee resides in the city.

2. The service and other business activity income factor is a fraction, the numerator of which is the total service and other business activity income of the taxpayer in the city during the tax period, and the denominator of which is the total service and other business activity income of the taxpayer everywhere during the tax period. Service and other business activity income is in the city if:

a. The customer location is in the city; or

b. The income-producing activity is performed in more than one (1) location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

c. The service and other business activity income producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

3. If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

a. Separate accounting;

b. The use of a single factor;

c. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

D. The definitions in this subsection apply throughout this section.

1. "Apportionable income" means the gross income of the business taxable under the service and other business activity classification, including income received from activities outside the city if the income would be taxable under the service and other business activity classification, if received from activities within the city, less any exemptions or deductions available.

2. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal Internal Revenue Code.

3. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

4. "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

5. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

6. "Service-taxable income" or "service income" means gross income of the business subject to tax under the service and other business activity classification, including but not limited to royalty income.

7. "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

8. "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

E. Assignment or apportionment of revenue under this section shall be made in accordance with and in full compliance with the provisions of the Interstate Commerce Clause of the United States Constitution where applicable.

F. This section does not apply to allocate gross income of motor carriers included in the measure of the tax pursuant to subsection 5.45.050 F of the Seattle Municipal Code. However, this section does apply to allocate gross receipts of motor carriers included in the measure of the tax pursuant to any other subsection of SMC 5.45.050.

Section 7. Effective January 1, 2008 Section 5.45.100 of the Seattle Municipal Code is amended as follows:

5.45.100 Deductions.

In computing the license fee or tax, the following may be deducted from the measure of tax:

J. Receipts From the Sale of Tangible Personal Property Delivered Outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is ((received by the purchaser or its agent)) delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

W. Receipts From the Sale of Tangible Personal Property or Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property or retail services delivered to the buyer or the buyer's representative outside the city but within the State of Washington may be deducted from the measure of tax under the retailing or wholesaling classifications. Retail services include those services defined as a retail service pursuant to SMC 5.30.040 L.

Section 8. Effective January 1, 2008 Section 5.48.050 of the Seattle Municipal Code is amended as follows:

5.48.050 Occupations subject to tax -- Amount.

There are levied upon, and shall be collected from everyone, including (T) the City of Seattle, on account of certain business activities engaged in or carried on, annual license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

A. Upon everyone engaged in or carrying on a telecommunications service or telephone business, a fee or tax equal to six (6) percent of the total gross income from such business provided to customers within the city. The tax liability imposed under this section shall not apply for that portion of gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for (network telephone) telecommunication service or telephone business that is purchased for the purpose of resale. (Such charges, except for interstate service, shall be taxed under SMC Chapter 5.45.) The total gross income shall also include all charges by the provider of cellular or cellular mobile telephone services provided to its customers in any taxing jurisdiction (intrastate or interstate), which are billed to a "place of primary use" located in Seattle by or for the home service provider, irrespective of whether the services are provided by the home service provider.

I. Upon everyone engaged in the business of operating or conducting a cable television system (CATV), a fee or tax equal to ten (10) percent of the total gross income from gross subscriber revenues. For purposes of this chapter, "gross subscriber revenues" means and includes those revenues derived from the supplying of subscription service, that is, installation fees, disconnect and reconnect fees, fees for regular cable benefits including the transmission of broadcast signals and access and origination channels and per-program or per-channel charges; provided the tax liability imposed under this section shall not include leased channel revenue, advertising revenues, or any other income derived from the system, which shall be taxed under SMC Chapter 5.45. The business of operating or conducting a cable television system (CATV) does not include the provision of interactive two-way communications over cable. Such activities shall be reported under the telecommunications service or telephone business classification.

Section 9. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 19th day of November, 2007, and signed by me in open session in authentication of its passage this 19th day of November, 2007.

NICK LICATA,
President of the City Council.

Approved by me this 26th day of November, 2007.

GREGORY J. NICKELS,
Mayor.

Filed by me this 26th day of November, 2007.

(Seal) JUDITH E. PIPPIN,
City Clerk.

Publication ordered by JUDITH PIPPIN,
City Clerk.

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